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In re Application of :  
RUBIN, Lee L., et al. :  
U.S. Application No.: 09/355,004 : DECISION ON PETITION  
PCT No.: PCT/US98/01322 : UNDER 37 CFR 1.181  
International Filing Date: 22 January 1998 :  
Priority Date: 22 January 1997 :  
Attorney's Docket No.: 21559 :  
For: IN VIVO APOPTOSIS SCREENING :

This decision is issued in response to applicants' "Petition To Withdraw Notification Of Abandonment" filed on 31 January 2001. No petition fee is required.

### **BACKGROUND**

On 22 January 1998, applicants filed international application PCT/US98/01322 which claimed a priority date of 22 January 1997 and which designated the United States.

On 13 August 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 22 July 1999.

On 21 July 1999, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 01 September 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 26 May 2000, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States based on applicants' failure to respond to the Notification of Missing Requirements.

On 31 January 2001, applicants filed the petition considered herein. The petition asserts that the abandonment of the present application should be withdrawn because applicants never received the Notification Of Missing Requirements mailed on 01 September 1999. Included with the petition is an executed declaration and payment of the \$130 surcharge for filing the declaration after the thirty-month deadline.

### DISCUSSION

As noted above, applicants argue in the present petition that the holding of abandonment should be withdrawn because applicant never received the Notification Of Missing Requirements mailed on 01 September 1999. Section 711.03(c)II of the MPEP sets forth the requirements for such a petition:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, applicants' petition is supported solely by the declaration of counsel Susan M. Michaud. The declaration includes the required statements that the docket records have been reviewed and that the Notification Of Missing Requirements was not received. However, applicants have not submitted copies of the relevant docket records, as required by the MPEP. Accordingly, applicants have failed to provide all the requirements of a grantable petition to withdraw the holding of abandonment.

### CONCLUSION

Applicants' Petition to Withdraw Notification of Abandonment is **DISMISSED** without prejudice. This application remains abandoned.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw Notification Of Abandonment."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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